Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79

COMMENTS OF GENERAL COMMUNICATION, INC.

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June 15, 2017

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General Communication, Inc. ("GCI") submits the following comments in connection with the Federal Communications Commission's ("FCC's" or "Commission's") *Notice of Proposed Rulemaking and Notice of Inquiry* (the "NPRM" and "NOI" respectively), which seeks comment on proposals to remove barriers to infrastructure investment and to accelerate wireless broadband deployment.[1] GCI encourages the Commission to move forward with a number of its proposals to remove barriers to wireless infrastructure investment and deployment.

I. INTRODUCTION AND SUMMARY

GCI, through its subsidiaries, covers more of Alaska's population via its wireless network than any other provider in the state. Unlike the networks of large national providers, which primarily serve only the most populated urban areas of Alaska, GCI provides a wide breadth of coverage across the entire state, particularly in under-or otherwise entirely un-served remote rural areas. GCI's longstanding familiarity with the unique demands of the Alaskan marketplace

[1] *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-69, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 17-38 (rel. Apr. 21, 2017) ("NPRM" or "NOI" respectively; collectively, the "Notice").

and environment, its deep resources in Alaska, and its understanding of the needs of Alaskans, have all contributed to the development and deployment of the largest wireless network in Alaska.

Providing wireless service to Alaska is particularly challenging. First, communities are separated by great distances – mostly unconnected by roads. Alaska is the largest state in America, with a vast territory and numerous small, remote communities.[2] This translates into steeper build-out costs for carriers that seek to serve Alaskans – especially rural Alaskans – and, thus, higher costs for Alaskan consumers. Second, climate, geography, and government land-ownership complexities often hamper infrastructure deployment and operation in Alaska. The already challenging build-out conditions are exacerbated by the extreme Alaskan weather, which significantly limits construction to a few months each year (which is shorter than construction seasons in any other part of the United States). Indeed, the Commission has recognized that "[t]he unique challenges of bringing widespread service to Alaska are not present in any other state."[3] These challenges include "its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season."[4]

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[2] According to 2010 U.S. Census data, Alaska has the lowest population density, with only 1.2 people per square mile statewide. Alaska ranks 52 out of 52 states and territories in population density (this ranking includes Puerto Rico and Washington D.C.). In contrast, the second least dense state, Wyoming, is nearly 5 times as dense, with a statewide population density of 5.8 people per square mile. *See* Resident Population Data, U.S. CENSUS BUREAU, http://www.census.gov/2010census/data/apportionment-dens-text.php.

[3] Letter from Roger S. Noel, Chief, Mobility Division, WTB, FCC, to Cindy Hall, AWN, DA 17-548 (June 6, 2017) ("AWN 700 MHz Waiver Grant").

[4] *Connect America Fund; Universal Service Reform – Mobility Fund; Connect America Fund - Alaska Plan,* Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10162,¶ 72 (2016) (Alaska Plan) (citing *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17829,¶ 507 (2011)

The very distance, climate, and geography characteristics that make it so uniquely difficult to provide wireless service also make reliable mobile service so important to the safety and livelihoods of Alaskans every day. GCI aims to bring Alaskans the best wireless service to the most people and in the most communities possible. Not only do customers rely on GCI's services, but many other wireless service providers also rely on GCI's network via roaming to ensure contiguous wireless communications service to their customers as well. Therefore, it is imperative that GCI be afforded the most effective tools and be able to make the most of every opportunity to ensure that its network continues to thrive throughout Alaska.

The obstacles listed above make the removing of other barriers to the deployment of wireless infrastructure of the utmost importance in Alaska. Being able to effectively acquire and deploy needed wireless infrastructure in a timely manner is a critical part of GCI's ability to expand and densify its wireless network. The Commission has recognized that carriers in Alaska experience a "lack of access to infrastructure that make it challenging to deploy voice and broadband-capable networks."[5] While this lack of access certainly is encumbered by the unique challenges and attributes of Alaska, GCI also encounters additional, significant regulatory barriers from local municipalities that could be otherwise avoided or mitigated.

To that end, GCI supports the Commission's efforts to examine and remove or reduce regulatory impediments to wireless network infrastructure investment and deployments. Any efforts to decrease the time necessary to secure needed approvals for the deployment and construction of sites would be particularly welcomed in Alaska, where even slight delays could push construction efforts out of the abnormally short available construction window. Even more

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(*USF/ICC Transformation Order*), *aff'd sub nom. FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014)).

[5] *Id.* at ¶ 5.

critical is providing additional timing and planning certainty regarding the construction of sites, so that carriers like GCI can plan their networks upgrades in connection with a more concrete timeline. Accordingly, GCI encourages the Commission to move forward with a number of its proposals to accelerate wireless broadband deployment. Specifically, the current shot clocks surrounding siting application review cause unnecessary delays and create extensive construction uncertainty, and GCI supports adopting shorter shot clocks along with a "deemed granted" finding once the shot clock expires. GCI also agrees that the Commission should provide guidance regarding the proper trigger for the beginning of the shot clocks, as the lack of clarity has been used by certain localities to garner additional time outside of the already-established shot clocks. Further, GCI provides insight into the significant issues it faces surrounding the imposition of "set back" requirements on wireless infrastructure - which single out wireless deployments and hinder proper infrastructure development and deployment. Finally, GCI offers comments to better ensure that Section 106 Tribal notification and review is resolved in a timely manner. This is an issue that is particularly important in Alaska, which is home to approximately 229 Federally Recognized Tribes.[6]

II. GCI SUPPORTS THE COMMISSION'S GOAL TO REDUCE UNNECESSARY DELAYS REGARDING THE REVIEW OF WIRELESS INFRASTRUCTURE APPLICATIONS

GCI generally supports the Commission's proposals to reduce unnecessary delays regarding the deployment of wireless infrastructure, and specifically offers comments on the following proposals surrounding the timing of infrastructure application review by localities:

[6] US Department of The Interior, Indian Affairs, Alaska Region Overview (last visited June 14, 2017) https://www.bia.gov/WhoWeAre/RegionalOffices/Alaska/index.htm; *see also* Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 68 Fed. Reg. 68,180, 68,183 (listing the Alaskan Native Entities within Alaska recognized and eligible to receive services from the United State Bureau of Indian Affairs).

A. Shot Clock & "Deemed Granted" Remedies

In GCI's experience, the current 90 and 150 day shot clocks imposed for states and local entities to review siting applications cause delays that oftentimes have drastic impacts on GCI's planned buildouts.[7] For example, an 150 day shot clock can cause GCI to miss an entire Alaskan construction season (which generally lasts approximately 3-4 months, from approximately June to September depending on weather and barge schedules). The uncertainty surrounding the shot clocks, including when they begin and end, materially affect GCI's ability to plan its network buildout. Accordingly, GCI recommends that the Commission (1) shorten its existing shot clocks to 60 days for collocations and 90 days for all other siting applications and (2) establish a "deemed granted" remedy to ensure that wireless providers can adequately plan construction according to established hard deadlines.[8]

A real world example – representative of what often occurs at the local level with regarding to siting applications – demonstrates the uncertainty and expense associated with the current siting application process. On January 4, 2016, GCI filed an application with a local commission in an effort to permit a wireless site in a particularly remote location in Alaska. The application was slated for hearing at the February commission meeting, but which was continued for lack of quorum. Local commission staff also requested additional information from GCI (information that was not required based on municipal code), and further pushed the public hearing to April 2016. In April, the commission for the first time actually reviewed the application and GCI's responses, and then elected to continue the public hearing for an additional two months – to June – in order to seek additional non-material responses. In June,

[7] NPRM ¶ 17.

[8] *Id.* ¶¶ 8-16.

the Commission again did not have a quorum, and the public hearing was continued to July, which exceeded the 150-day shot clock that had expired on June 2.

While current policy allowed GCI to sue the state or local agency for failure to act within the shot clock,[9] GCI was concerned that a federal court proceeding would be more lengthy and cumbersome than waiting another month for the hearing, so it elected not to seek resolution via that route at that time. The permit was denied in July. GCI appealed, and the permit was granted in September, ***nine months after filing its initial site permit application***. Unfortunately, at this time, GCI was unable to commence buildout since it had missed its construction season, which as noted above only lasts until sometime in September, despite filing its application well before the Alaskan construction season had begun. This process therefore meaningfully delayed GCI's deployment of needed wireless infrastructure, beyond the nine months it took the locality to grant the application, to the detriment of GCI customers who would otherwise have received new or improved service sooner.

This example demonstrates the very real consequences that result from localities' ability to circumvent the shot clock regulations. Indeed, the established process allows localities to let the relevant shot clocks lapse at their discretion, as the burden and expense associated with an appeal falls directly on the siting applicant. This process puts the incentives in the wrong place. Therefore, GCI recommends that the FCC not only adopt shorter shot clocks, but also strongly supports the Commission's proposal to impose a "deemed granted" finding once the applicable shot clock expires. Specifically, GCI supports reducing the shot clocks for wireless siting applications, including collocations and applications that are not applicable to the Spectrum Act,

[9] *Id.* ¶ 8.

to 60 days for all collocations, and 90 days for all other siting applications days.[10] In addition, GCI suggests that the FCC clarify that any time allocated to an appeals process set forth by the applicable state or locality is a part of the relevant shot clock. Localities should not be able to reject applications as a matter of course pending a local appeals process that exploits a potential loophole in the Commission's rules. Alternatively, if the locality substantively objects to an application, then the Commission should establish a separate, shorter shot clock of 20 days to apply for the applicable appeals process outside of the original 60- or 90- day shot clock time period.

Revising the timing of the shot clocks will not have a significant impact on wireless deployment unless the FCC provides additional opportunities for resolution of infrastructure applications. The FCC should impose checks and balances over the localities in order to incite them to act on an application. As explained in the example above, while the ability to sue the locality for inaction is helpful, that often is not a realistic remedy since the process can tack on additional months or even years, cost a great deal of resources, and simply may not be as efficient as waiting for the locality to act in its own process, which may exceed the shot clock, effectively nullifying the value of the shot clock. In order for the process to be effective, there must be a strong incentive for the particular locality to act.

As then-Commissioner Pai remarked in connection with the introduction of his Digital Empowerment Agenda, "[w]e should give our shot clock some teeth by adopting a 'deemed grant' remedy. That way, if a local government does not act on a wireless facilities application by the end of the FCC's shot clock, that application would be considered approved and an ISP

[10] *Id.* ¶¶ 17-18.

could start building right away."[11] GCI strongly supports the Commission's proposal to adopt a "deemed granted" remedy if state and local authorities fail to meet their shot clock review windows. GCI believes that the Commission has significant existing authority to ensure that wireless infrastructure applicants have greater certainty when it comes to the application review process through a "deemed granted' finding.

B. "(In)Complete" Applications

Relatedly, the Commission should insert additional "teeth" into its siting regulations: clarifying the start date of the shot clock. Localities currently have the ability to unnecessarily delay the processing of wireless infrastructure applications by claiming that a shot clock does not begin until the application is deemed "complete" by its own standards (of which are often unbeknownst to the applicant and may be arbitrary to the actual merits of whether the application provides all needed information). Indeed, GCI has encountered delays due to such localities finding that a submitted application is "incomplete" – despite the lack of material concerns expressed by the locality. In such instances, localities will request addition information and in most cases, much of the information requested to make the application "complete" is already contained in the original application, or is contained in the application in a slightly different form than is being requested upon review.[12]

The FCC should clarify that the various shot clocks begin when applications are filed, so long as such applications provide all information detailed in and/or required by the state or

[11] Ajit Pai, Former Commissioner, FCC, Remarks at the Brandery; A Digital Empowerment Agenda, Cincinnati, Ohio, (Sept. 13, 2016).

[12] For instance, one locality issued GCI a notice of incomplete application, claiming the application lacked certain "additional information" which included page numbers, information that despite already being submitted in narrative form would only be acceptable in table format, and also included requests for numerous items that were already provided by GCI in the original application. For these reasons, the application was deemed incomplete.

localities' regulations and/or forms.[13] If the locality has legitimate follow-up questions on the application, then the onus to respond promptly should be placed on the applicant (i.e., the applicant would have three business days to respond to the questions). If the applicant fails to respond within a reasonable period of time as detailed by the FCC, then the locality may pause the shot clock.

By adopting the changes requested herein, the FCC will reinvigorate the shot clock by reducing the opportunities for abuse of the shot clocks that unnecessarily delay wireless infrastructure applications and hinder broadband deployment, while allowing localities to seek necessary information and to address legitimate concerns.

III. THE IMPOSITION OF SET BACK REQUIREMENTS ON WIRELESS INFRASTRUCTURE IS UNREASONABLY DISCRIMINATORY

The FCC also seeks comment on whether any State or local regulations "single-out telecom-related deployment for more burdensome treatment than non-telecom deployments that have the same or similar impacts on land use," in potential violation of Sections 253 and 332 of the Communications Act.[14] The FCC asks whether States and localities unreasonably discriminate among providers of "functionally equivalent services."[15] GCI has encountered such regulations when deploying sites throughout Alaska, in the form of unreasonable set back requirements. In GCI's experience, multiple Alaskan jurisdictions impose minimum set back requirements for wireless infrastructure which are inapplicable to any other type of construction in the same jurisdiction. Examples include:

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[13] *See* NPRM ¶ 20.

[14] NOI ¶ 97.

[15] *Id.* ¶ 98.

- One jurisdiction requires that a telecommunications tower must be 200% of the "allowable or actual tower height, whichever is greater" from any principal structure on residentially-zoned land, or any school or childcare center.
- Another jurisdiction requires that telecommunications towers must be "set back from adjacent property lines a distance equal to or greater than the actual height of the tower."

These examples only apply – and add significant hurdles – to wireless siting applications. Such set back requirements also may lead to discriminatory results in instances of collocations on existing (non-telecom) infrastructure: for instance, a utility pole by itself would not be required to comply with these set-back restrictions, but if a wireless antenna is seeking to be placed or collocated on this structure, then it would become "telecommunications infrastructure" subject to the set back requirement. Such requirements also unreasonably discriminate against wireless providers, who are providing "functionally equivalent services" under Section 332(c)(7)(B)(i)(I) of the Act. GCI encourages the Commission to impose regulations to discourage this type of behavior, which has the practical effect of hindering wireless broadband deployment.

IV. THE FCC MUST TAKE ADDITIONAL STEPS TO CLOSE UNINTENDED GAPS IN THE SECTION 106 TRIBAL REVIEW PROCESS

More than 80,000 Tribal members make up the 229 Federally Recognized Tribes in Alaska.[16] For Federal support purposes, all of Alaska is considered a Tribal land. In many instances, GCI was the first provider of wireless services in these Alaska Native communities

[16] US Department of The Interior, Indian Affairs, Alaska Region Overview (last visited June 14, 2017) https://www.bia.gov/WhoWeAre/RegionalOffices/Alaska/index.htm;

and is proud to work closely with such Tribal Nations. GCI has a number of targeted recommendations consistent with the NPRM's proposals regarding the Section 106 process.

As an initial matter, the record accurately reflects that the process of consulting Tribal Nations pursuant to the Section 106 process is particularly cumbersome and costly.[17] Wireless providers have long argued that the process has caused substantial delays. To exacerbate the issue, the average number of Tribal Nations required to be consulted per review has increased in recent years.[18] The process is clearly extremely burdensome and resource-intensive on wireless siting applicants, to the detriment of Tribal Nations who may want service in their communities and wireless providers alike.

While GCI appreciates the FCC's efforts in developing TCNS, the existing process often results in delays due to applications slipping through the cracks, and despite good intentions, the process associated with TCNS at times actually slows down the Section 106 review process. For instance, oftentimes federally-recognized Alaska Native entities fail to respond to GCI's requests and notifications, and, without accurate, verified contact information (which is not currently mandated), GCI is unable to seek confirmation of receipt or approval of such notifications. This results in a process whereby a provider's hands are tied since it is unable to contact the appropriate Tribal representative to move a stalled application along.

To help accelerate the process associated with TCNS, GCI recommends that after a period of non-response to proper notifications, requests to Tribal entities are considered granted. Accordingly, GCI would support a "deemed granted" or "no objection" consideration once notifications are not responded to by the appropriate Tribal entity for 30 days. In order to further ensure that Tribes are receiving the notices required under the rule, the FCC should also

[17] NPRM ¶ 35.

[18] *Id.*

implement requirements that Tribes be required to maintain updated contact information with TCNS. This will help achieve the goal of TCNS and also better ensure that wireless notifications reach the Tribal representative and do not go unnoticed. GCI believes that these two modifications would allow for more efficient processing of Section 106 Tribal Review notifications via TCNS.

In addition, GCI also encounters issues where numerous Alaska Native tribes have significant attachments to the same geographic areas of interest.[19] As noted herein, Alaska has hundreds of recognized Alaska Native entities; indeed, GCI has sought to deploy service in a single area where over 48 Alaska Native Tribes have claims to the relevant land.[20] In such instances, under the current rules, GCI may have to successfully communicate with each of these 40 Alaska Native entities before deploying infrastructure, which significantly delays the review of GCI's request or notification. While GCI, like the FCC, respects each Alaska Native Tribe with unique concerns, requiring applicants to consult with 40 different entities for the same project or activity may not always be necessary or beneficial.[21] Accordingly, the Commission should take steps to mitigate and expedite the process. When multiple Tribes are affected, GCI suggests that the FCC implement a procedure where one Tribe or representative is appointed to take the lead on reviewing applications and will coordinate with, and speak on behalf of, all of the Tribes affected. Such a modification will help ensure that the wireless notifications are being

[19] *See id.* ¶ 53.

[20] For instance, GCI was required to consult with 48 Tribes prior to installing wireless infrastructure in both Kasigluk and Atmautluak, which are two communities in the Bethel area. Other examples include communities such as Napaimute (44 Tribes), Manley, Minto and Nenana (each with 32 Tribes), Galena, Birch Creek, Beaver, Arctic Village, Venetie, Circle, Stevens Village, Nikolai, Anderson, and Chalkitsik (each with 31 Tribes), and Shishmaref, Brevig Mission, Nome, Koyuk, Stebbins, Golovin, Teller, Savoonga, Unalakleet, Kotlik, Elim, and Gambell (each with 20 or more Tribes).

[21] *See* NPRM ¶ 55.

reviewed promptly and properly, while also ensuring that all of the Tribal Nations are represented, receive the Notice and are provided opportunity to comment.

In addition, as a further revision to the TCNS process, GCI recommends that TCNS be modified to retain information on areas where concerns were raised and reviews conducted, so that future filers may know in advance whether there is a concern about cultural resources in that area or not, and address that concern at the outset and/or change plans appropriately.[22] Such information could be stored via a FCC or third party database, which would allow Tribes to continually update information as to where they may has a justifiable interest. This database would provide a single source of information that would provide certainty to both wireless carriers and tribes on the siting process. Allowing future applicants to have the ability to rely on prior clearances and/or have knowledge of prior concerns from the tribes would be a significant measure for applicants to accelerate broadband deployment. These actions will go a long way toward facilitating successful coordination with Tribes and helping applicants plan realistic infrastructure deployment schedules.

[22] *See id.* ¶ 54.

V. CONCLUSION

For the foregoing reasons, GCI respectfully requests that the Commission adopt the proposals set forth herein to remove unnecessary barriers to infrastructure investment and promote additional wireless broadband deployment.

Respectfully submitted,

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